

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

AMERICAN GENERAL LIFE
INSURANCE COMPANY,

Plaintiff,

v.

ELLA SCHREIBER, NERIMAN
SCHREIBER, CLAIRE SCHREIBER
and ROBERT SCHREIBER,

Defendants.

ORDER

3:07-cv-500-bbc

According to the record in this case, each of the defendants has filed an answer to the complaint that has been served on the other parties to the lawsuit. A memorandum was entered on December 18, 2007, documenting this fact. The memorandum appears to have crossed in the mail with defendant Ella Schreiber's "Motion for Judgment on the Pleadings" dated December 17, 2007. In her motion, defendant Ella Schreiber asks the court to grant judgment in her favor for the following reasons:

1. Defendant Claire Schreiber did not put a caption on her answer and her answer does not contain her address and telephone number.
2. Defendant Claire Schreiber's answer does not show that she is entitled "to the

entire Insurance Proceeds.”

3. The answers of defendants Robert and Neriman Schreiber have not been served on defendant Ella Schreiber.

From the affidavit of mailing attached to defendant Ella Schreiber’s motion, it is apparent that she is aware of the addresses of the other defendants. Further, the record reveals that defendant Ella Schreiber’s lawyer obtained the other defendants’ telephone numbers in advance of the preliminary pretrial conference held by telephone in this case on January 15, 2008. (Counsel for Ella Schreiber was responsible for placing the call.) In addition, although the answers of Claire, Robert and Neriman Schreiber lack captions, the December 18 memorandum instructs all of the parties in this action to use captions in all future filings as Rule 10 requires. The failure of defendants Claire, Robert and Neriman Schreiber to include a caption and addresses and telephone numbers on their answers has not prejudiced defendant Ella Schreiber. She is not entitled to judgment in her favor because of these technical flaws in the pleadings.

Defendant Ella Schreiber also seeks judgment in her favor on the ground that defendants Neriman and Robert Schreiber failed to send her a copy of their answers. This failure to comply with Fed. R. Civ. P. 5 was remedied on December 18, 2007, when the court sent defendant Ella Schreiber a copy of the answers of Neriman and Robert Schreiber and instructed all of the parties of their need to comply with Rule 5 for all future filings.

Defendant Ella Schreiber is not entitled to judgment on this ground.

Finally, defendant Ella Schreiber also believes herself entitled to judgment because defendant Claire Schreiber's answer does not show that she is entitled "to the entire Insurance Proceeds." Counsel for defendant Ella Schreiber should know that the pleadings in a case are not evidence. Defendant Claire Schreiber was not required at this early juncture to prove her entitlement to the insurance proceeds that are at issue in this case. That comes later, either on a motion for summary judgment or at trial.

ORDER

IT IS ORDERED that defendant Ella Schreiber's Motion for Judgment on the Pleadings is DENIED.

Entered this 1st day of February, 2008.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge